

§ 304.41

40 CFR Ch. I (7-1-07 Edition)

(c)(1) If any award made in the final decision is not paid within the time required by §304.33(f) of this part, the final decision may be enforced as a settlement under section 122(h) of CERCLA, 42 U.S.C. 9622(h), by the Attorney General on behalf of EPA in any appropriate Federal district court pursuant to section 122(h)(3) of CERCLA, 42 U.S.C. 9622(h)(3). Pursuant to section 122(h)(3) of CERCLA, the terms of the final decision shall not be subject to review in any such action.

(2) In any such enforcement action initiated by the United States, the final decision may be challenged by any party if:

(i) It was achieved through fraud, misconduct, or partiality on the part of the Arbitrator;

(ii) It was achieved through fraud or misconduct by one of the parties affecting the result;

(iii) The Arbitrator exceeded his or her jurisdiction under §304.20 of this part or failed to decide the claim within the bounds of his or her authority under this part; or

(iv) It violates public policy.

(3) Except as necessary to show such fraud, misconduct, partiality, excess of jurisdiction or authority, or violation of public policy, in any such enforcement action, a party may not raise, for the purpose of overturning or otherwise challenging the final decision, issues arising in the claim that were not submitted for resolution by arbitration.

(d) Except as provided in paragraph (c) of this section, and except as necessary for a participating PRP to defend against an action seeking contribution for matters addressed by the final decision, no final decision shall be admissible as evidence of any issue of fact or law in any proceeding brought under any provision of CERCLA or any other provision of law.

(e) Neither the initiation of an arbitral proceeding nor the rendering of a final decision on an EPA claim shall preclude or otherwise affect the ability of the United States, including EPA, to:

(1) Seek injunctive relief against any participating PRP for further response action at the facility concerned pursu-

ant to CERCLA or any other applicable statute, regulation or legal theory; or

(2) Take further response action at the facility concerned pursuant to CERCLA or any other applicable statute, regulation or legal theory; or

(3) Seek reimbursement from any participating PRP for any costs not the subject of the arbitral proceeding pursuant to CERCLA or any other applicable statute, regulation or legal theory; or

(4) Seek any relief for any violation of criminal law from any participating PRP; or

(5) Seek damages for injury to, destruction of, or loss of natural resources from any participating PRP; or

(6) Seek any relief, civil or criminal, from any person not a party to the arbitral proceeding under CERCLA or any other applicable statute, regulation or legal theory.

§304.41 Administrative fees, expenses, and Arbitrator's fee.

(a) The Association shall prescribe an Administrative Fee Schedule and a Refund Schedule, which shall be subject to the approval of EPA. The schedule in effect at the time of filing or the time of refund shall be applicable.

(b) Expenses of witnesses shall be borne by the party producing such witnesses. The expense of the stenographic record and all transcripts thereof shall be prorated equally among all parties ordering copies, unless otherwise agreed by the parties, or unless the Arbitrator assesses such expenses or any part thereof against any specified party in the decision. The expense of an interpreter shall be borne by the party requesting the interpreter.

(c) The Association shall establish the per diem fee for the Arbitrator, subject to the approval of EPA, prior to the commencement of any activities by the Arbitrator. Arrangements for compensation of the Arbitrator shall be made by the Association.

(d) The Association shall make appropriate arrangements to pay the Arbitrator's fee and the administrative fee, and shall render an accounting to the parties in accordance with the Arbitrator's award, within thirty days after the date of the final decision.

Environmental Protection Agency

§ 305.1

(e) In any arbitration conducted prior to the selection of the Association (*see* §304.21(e) of this part), all fees and expenses of the arbitral proceeding, including the Arbitrator's fee, shall be divided equally among all parties, except that expenses of witnesses shall be borne by the party producing such witnesses, expenses of an interpreter shall be borne by the party requesting such interpreter, and the expense of the stenographic record and all transcripts thereof shall be prorated equally among all parties ordering copies.

§ 304.42 Miscellaneous provisions.

(a) Any party who proceeds with the arbitration knowing that any provision or requirement of this part has not been complied with, and who fails to object thereto either orally or in writing in a timely manner, shall be deemed to have waived the right to object.

(b) The original of any joint request for arbitration, modification to any joint request for arbitration, pleading, letter, or other document filed in the proceeding (except for exhibits and other documentary evidence) shall be signed by the filing party or by his or her attorney.

(c) All papers associated with the proceeding that are served by a party to an opposing party shall be served by personal service, or by United States first class mail, or by United States certified mail, return receipt requested, addressed to the party's attorney, or if the party is not represented by an attorney or the attorney cannot be located, to the last known address of the party. All papers associated with the proceeding that are served by the Arbitrator or by the Association shall be served by personal service or by United States certified mail, return receipt requested, addressed to the party's attorney, or if the party is not represented by an attorney or the attorney cannot be located, to the last known address of the party.

(d) If any provision of this part, or the application of any provision of this part to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances and the remainder of this part shall not be affected thereby.

PART 305—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) ADMINISTRATIVE HEARING PROCEDURES FOR CLAIMS AGAINST THE SUPER-FUND

Subpart A—General

- Sec.
- 305.1 Scope.
 - 305.2 Use of number and gender.
 - 305.3 Definitions.
 - 305.4 Powers and duties of the Review Officer and the Presiding Officer; disqualification.
 - 305.5 Filing, service, and form of pleadings and documents.
 - 305.6 Computation and extension of time.
 - 305.7 *Ex parte* discussion of proceeding.
 - 305.8 Examination of documents filed.

Subpart B—Parties and Appearances

- 305.10 Appearances.
- 305.11 Consolidation and severance.

Subpart C—Prehearing Procedures

- 305.20 Request for a hearing; contents.
- 305.21 Amendment of request for a hearing; withdrawal.
- 305.22 Answer to the request for a hearing.
- 305.23 Motions.
- 305.24 Default order.
- 305.25 Informal settlement; voluntary agreement.
- 305.26 Prehearing conference.
- 305.27 Accelerated order, order to dismiss.

Subpart D—Hearing Procedure

- 305.30 Scheduling the hearing.
- 305.31 Evidence.
- 305.32 Objections and offers of proof.
- 305.33 Burden of presentation; burden of persuasion.
- 305.34 Filing the transcript.
- 305.35 Proposed findings, conclusions, and order.
- 305.36 Final order; costs.

AUTHORITY: 42 U.S.C. 9601 *et seq.*; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.

SOURCE: 58 FR 7706, Feb. 8, 1993, unless otherwise noted.

Subpart A—General

§ 305.1 Scope.

(a)(1) This part governs all administrative proceedings for the total or partial denial of response claims asserted